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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

FRANK BUONO,

Plaintiff,

v.

KEN SALAZAR, Secretary of the
Interior, in his official capacity, *et al.*

Defendants.

Case No. 5:01-CV-00216-RT-SGL
SETTLEMENT AGREEMENT
Honorable Robert J. Timlin

Plaintiff Frank Buono and Defendants, Ken Salazar, Secretary of the
Interior, *et al.*, (hereafter, the Settling Parties) through their undersigned attorneys,
hereby agree to enter into this Settlement Agreement (Agreement), subject to

1 Court approval, for the purpose of settling the above-captioned lawsuit without
 2 further judicial proceedings and for no other purpose. As grounds for this
 3 Agreement, the Settling Parties hereby agree and stipulate the following points.

4 **I. EXPLANATORY RECITALS**

5 WHEREAS, on March 22, 2001, the Plaintiff commenced this action by
 6 filing a Complaint for Injunctive and Declaratory Relief,

7 WHEREAS, on July 24, 2002, the Court (Honorable Robert J. Timlin)
 8 issued a memorandum opinion and order and entered Judgment for the Plaintiff,
 9 permanently enjoining the Defendants from permitting the public display of a
 10 Latin cross on Sunrise Rock on federal land within the Mojave National Preserve,
 11 Buono v. Norton, 212 F.Supp.2d 1202 (C.D. Cal. 2002);

12 WHEREAS, on September 30, 2003, Congress enacted the Department of
 13 Defense Appropriations Act, 2004, Pub. L. No. 108-87, § 8121, 117 Stat. 1100,
 14 which directed the Secretary of the Interior to undertake a land exchange by
 15 transferring one acre of land around the cross in exchange for a five-acre parcel of
 16 privately owned land elsewhere within the boundaries of the Mojave National
 17 Preserve;

18 WHEREAS, on October 27, 2003, the United States Court of Appeals for
 19 the Ninth Circuit affirmed this Court's injunction and remanded the case for
 20 further proceedings, in light of the congressional enactment of § 8121, Buono v.
 21 Norton, 371 F.3d 543 (9th Cir. 2003);

22 WHEREAS, on April 8, 2005, on remand from the Ninth Circuit, this Court
 23 issued an Order granting Plaintiff's motion to enforce the injunction, Buono v.
 24 Norton, 364 F. Supp. 2d 1175 (C.D. Cal. 2005);

25 WHEREAS, on May 14, 2008, the Ninth Circuit affirmed the order to
 26 enforce the injunction and entered its judgment accordingly, Buono v. Norton, 527
 27 F.3d 758 (9th Cir. 2008);

28 WHEREAS, on April 28, 2010, the United States Supreme Court, on

petition for writ of certiorari, entered judgment reversing the judgment of the Ninth Circuit and remanded the case for further proceedings, with directions for this Court to conduct a further inquiry into the application of § 8121;

WHEREAS, on July 14, 2010, this Court held a status conference with the parties, during which counsel for the Plaintiff and the Defendants advised the Court of their mutual interest in entering into settlement negotiations; and

WHEREAS, the Settling Parties now have reached agreement to settle and resolve this litigation according to the terms and conditions as set forth below;

NOW, THEREFORE, in the interests of the Settling Parties, in the public interest, and to promote judicial economy, the Settling Parties hereby stipulate and agree to the following terms in settlement of any and all claims in the above-captioned litigation:

II. AGREEMENT

A. Purpose of the Settlement Agreement

This Agreement is executed solely for the purpose of compromising and settling this litigation, and nothing herein shall be construed as a precedent in any other context. This Agreement is not, and shall not be construed as, an admission against interest or positions taken or of wrongdoing or liability, by any of the Settling Parties with respect to any fact or issue involved in any pending or future litigation.

B. Terms of the Settlement Agreement

1. In order to effectuate the exchange of property described in Section 8121 of the Department of Defense Appropriations Act, 2004, Pub. L. No. 108-87, 117 Stat. 1100, the Defendant National Park Service (NPS) agrees:

(a) to delineate a parcel of real property consisting of approximately one acre of land in the Mojave National Preserve, designated as a national memorial commemorating

1 the United States' participation in World War I and honoring
2 the American veterans of that war. The national memorial is
3 designated in § 8137 of the Department of Defense
4 Appropriations Act, 2002, Pub. L. No. 107-117, 115 Stat.
5 2278; and

6 (b) to convey the delineated parcel to the Veterans Home of
7 California - Barstow, Veterans of Foreign Wars (VFW) Post
8 #385E or to its successor-in-interest.

9 2. The NPS agrees to install and administer an appropriate fence on
10 federal land around the one-acre parcel at Sunrise Rock. The fence
11 shall be at least four feet high and the portion facing Cima Road shall
12 be clearly visible from the road. The NPS will install and administer
13 appropriate signage on the fence, indicating that the property inside
14 the fenced area is private property, and shall include at least one such
15 sign on all sides of the fence around Sunrise Rock. The NPS will not
16 fence the driveway areas along the side of Sunrise Rock away from
17 Cima Road, which may be used for vehicular access to the one-acre
18 parcel following transfer of the parcel to the VFW, as directed by
19 Congress in § 8121.

20 3. Prior to completing the land exchange transfer described in § 8121,
21 the NPS will agree to install the plaque on the rock outcropping
22 known as Sunrise Rock, as that plaque is described in § 8137(c) of
23 the Department of Defense Appropriations Act, 2002, Pub. L. No.
24 107-117, 115 Stat. 2278.

25 4. The NPS agrees that it will not install other plaques in the Preserve in
26 reference to the cross or the national memorial described in § 8137
27 and § 8121. The NPS reserves the right to provide information about
28 the memorial in other forms, such as NPS brochures and maps, and to

1 erect appropriate signage along Cima Road in the vicinity of Sunrise
2 Rock in order to enhance public safety and provide safe and suitable
3 public access. The NPS also reserves the right to allow NPS staff to
4 answer questions about the memorial.

5 5. Consistent with the representations that counsel for the United States
6 made to the U.S. Court of Appeals for the Ninth Circuit and the
7 United States Supreme Court, the NPS agrees that, notwithstanding
8 the language in § 8137(c), the Defendants will not acquire a replica of
9 the original cross, provided that the United States is able to complete
10 the transfer of the land to the VFW as directed by Congress in § 8121
11 and so long as the conveyed property does not revert to the ownership
12 of the United States under § 8121(e).

13 6. The NPS agrees to administer the right of access across Federal land
14 by the VFW and its agents to the one-acre parcel of private property,
15 as prescribed by section 708 of the California Desert Protection Act,
16 16 U.S.C. 410aaa-78 (108 Stat. 4500) The NPS further agrees that
17 the reasonable use and enjoyment of the one-acre parcel transferred to
18 the VFW is to maintain a memorial to the United States' participation
19 in World War I, as described by statute in section 8137 of the
20 Department of Defense Appropriations Act for Fiscal Year 2002,
21 January 10, 2002 (115 Stat. 2278).

22 7. The Settling Parties request that the Court vacate the permanent
23 injunction issued on April 8, 2005 (Docket No. 126), which has
24 enjoined the Defendants from transferring title to the land to the VFW
25 as directed in § 8121. Upon vacation of the permanent injunction, the
26 Plaintiff Frank Buono agrees to dismiss this litigation and waive any
27 right to pursue future challenges to the constitutionality or application
28 of § 8121 with regard to the cross or national memorial on Sunrise

1 Rock.

2 8. The Settling Parties agree that, following dismissal of this action, this
3 Court may retain jurisdiction for the limited purpose of resolving any
4 disputes that may arise regarding compliance with the terms of this
5 Settlement Agreement. If any Party believes that another Party has
6 failed to fulfill any obligation under this Settlement Agreement, the
7 Party shall, prior to initiating any court proceeding to remedy such
8 failure, give written notice of the failure to the lead counsel of record
9 for the other Party and attempt in good faith to resolve any such
10 failure. If the Parties are unable to resolve their differences within
11 sixty (60) days of the written notice, then any Party may file a motion
12 requesting the Court to resolve the dispute regarding compliance with
13 the terms of this Settlement Agreement, which shall be the sole and
14 exclusive remedy available. In exercising the retained jurisdiction to
15 resolve disputes brought before the Court by the Parties as provided
16 in this Paragraph, the Court shall award only such relief as is
17 provided in 5 U.S.C. § 706. In no case shall a Party be deemed in
18 contempt or otherwise subject to the provisions of this Paragraph
19 until after a reasonable time is provided for compliance. Each Party
20 shall be responsible for its own attorneys' fees incurred under this
21 paragraph, except that, should a motion to resolve disputes
22 concerning compliance with the Settlement Agreement be filed, the
23 prevailing party in that proceeding shall be entitled to request
24 reasonable attorneys' fees associated with drafting and filing any such
25 motion or opposition to such motion.

26 9. Nothing in this Stipulation shall be interpreted or shall constitute, a
27 requirement that the Defendants are obligated to pay any funds
28 exceeding those available, or take any action in contravention of the

1 Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable
2 appropriations law.

3 10. The Settling Parties agree that each party will bear its own costs and
4 fees of litigation, including attorneys' fees. The Settling Parties
5 further agree that nothing in this paragraph shall affect any payment
6 of attorneys' fees and costs previously made by any of the parties.

7 Respectfully submitted on April 16, 2012, by:

8 /s/

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